

**REMARKS**

Claims 1, 3-11, 27, 29-38 and 56 are pending. Claims 1, 27 and 56 are the only independent claims.

Claims 1, 3-11, 27, 29-38 and 56 were rejected under 35 U.S.C. § 102(e) over Cervello et al. (WO 02/23819). Applicants traverse.

Claim 1 recites, inter alia, "a first step of making decision of said channel at a certain timing in said one radio station, said timing being based on a predetermined constant period or a variable period, and said timing being independent of a detection of interference; . . . ."

This portion of claim 1 relates to the timing of making *a decision of the channel* at a periodic timing. Moreover, the periodic timing is independent of a timing based on detection of interference.

First, in the Office Action, the Examiner did not specifically address the limitation that the certain or variable timing is unrelated to detection of interference. The Examiner relied upon page 6, lines 25-27 of Cervello et al. as showing making a decision of said channel at a contention free period, which he reads on the recited "certain timing."

However, the cited portion of Cervello et al. is not directed to *a timing of deciding the channel*, as recited. Instead, the cited portion of Cervello et al. relates to the timing *for taking the measurement*, e.g., of channel quality. For at least this reason, no prima facie case of anticipation has been set forth in the Office Action.

As can be seen at page 10, lines 5-12 of Cervello et al. the timing of the actual decision relating to the changing of the channel is made *when the channel quality report is received* from the STAs, which does not correspond to the recited predetermined constant or variable period, still less one that is independent of a detection of interference as recited.

As has been pointed out previously, Cervello et al. makes a decision of the channel based on detection of interference (or deterioration in communication quality) as a trigger for making the decision, and does so upon receipt of the channel quality report. Moreover, while Cervello mentions *carrying out a measurement* (e.g., of channel conditions) periodically, there is no mention of *making a decision of the channel* periodically, and independent of a detection of interference.

For at least the foregoing reasons, claim 1 is believed clearly patentable over Cervello. Independent claims 27 and 56 recite substantially the same feature and are believed patentable for at least the same reasons.

The other claims are dependent upon the independent claims discusses above and are believed patentable for at least the same reasons as their respective base claims.

In view of the foregoing remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

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